

Appl. No. 10/083,050
Atty. Docket No. 8439M
Amtd. dated January 6, 2005
Reply to Office Action of October 28, 2004
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 20 are pending in the present application. Claims 1 – 15 and 18 – 20 have been rejected under 35 U.S.C. § 103(a). Claims 16 and 17 have been withdrawn from consideration due to an earlier restriction requirement.

Rejection Under 35 USC §103(a) Over Bissett in view of Varona

Claims 1 – 4, 6 – 9, 11 and 12 have been rejected under 35 USC §103(a) as being unpatentable over Bissett, et al (US Patent No. 5,821,237) in view of Varona (US Patent No. 4,309,469). Applicants respectfully traverse this rejection.

The Office Action argues that Bissett discloses the claimed composition and a non-woven substrate. Varona is used for the teaching of a pre-moistened wet wipe comprising an air laid non-woven substrate. The Office Action makes the argument that these two patents are combinable based on a desire to produce a non-woven substrate suitable for use as a wet wipe using an air laid non-woven. The Office Action states “motivation is found in expectation of being able to successfully practice the invention as disclosed by Bissett.” (Page 3). There is, however, no evidence of record that one of skill in the art would even desire to place the lotion of Bissett on an air laid or hydro-entangled non-woven substrate. The Office Action simply assumes that the general topical lotion of Bissett would be recognized as desirable as a composition on an air laid or hydro-entangled non-woven substrate. The analysis behind the rejection assumes that all conventional techniques for making nonwoven substrates are acceptable and interchangeable alternatives for each other in this context and that this would be appreciated by one of ordinary skill in the art. There is, however, no cited evidence of this. The current claims are combining a particular lotion with particular non-woven substrates (i.e., air laid and hydro-entangled) to make a wipe that is cleansing and feels good on the skin. All of the elements of the claims must be considered as a whole. The arguments put forth by the Office Action do not consider the particular type of nonwoven substrate used on the impact of the cleansing and sensory aspects of the claimed wet wipe. The mere fact that these techniques were available (i.e. could have been used) does not prove that one of ordinary skill would have made this particular combination of lotion and substrate (i.e. would have recognized the desirability of doing so).

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Rejection Under 35 USC §103(a) Over Bissett in view of Varona in further view of Luu

Claims 4 and 10 have been rejected under 35 USC §103(a) as being unpatentable over Bissett in view of Varona, as applied to Claim 1, and further in view of Luu et al. (US Patent No. 5,871,763). Applicants respectfully traverse this rejection.

As already stated, Bissett and Varona are not properly combinable in the manner put forth in the Office Action. The addition of Luu does not facilitate the combination. Luu is being utilized to provide an anionic surfactant to the lotion combination of Bissett and Varona and to teach the amount of lotion to apply to the substrate. Luu, however, utilizes a lotion that is different from the lotion claimed in the current application. Luu specifically states "most preferably, the lotion is substantially free of water, i.e., anhydrous." (Col. 3, lines 66 – 67). Luu continues to states that "typically, the lotion of the present invention contains about 15% or less water." (Col. 4, lines 3 – 4). Claims 4 and 10 of the current application both depend upon Claim 1 which requires an aqueous carrier. "The major proportion, e.g., more than about two thirds, (typically, approximately 80% - 99.7%, by weight) of the compositions herein comprises water as the solubilizing carrier for the ingredients..." (Page 14, lines 25 – 27). There is no showing in the Office Action that the ingredients in such an anhydrous lotion as provided by Luu would work in the same manner in a substantially aqueous based lotion. There is also no showing that the amount of lotion to be loaded on the substrate would be the same between these two different types of lotions.

Rejection Under 35 USC §103(a) Over Bissett in view of Varona in further view of Brennan

Claims 13 – 15 and 18 – 20 have been rejected under 35 USC §103(a) as being unpatentable over Bissett in view of Varona in further view of Brennan (US Patent No. 6,361,784). This rejection is traversed because Brennan is not available as prior art against the present application under 35 USC §103(c).

Brennan issued on March 26, 2002. The present application has a priority date of March 1, 2001. This means Brennan only qualifies as prior art under 35 U.S.C. § 102(e). Furthermore, the present application and Brennan were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to, The Procter & Gamble Company as evidenced by the acknowledgments made in the assignment documents which have been recorded in the United States Patent and Trademark Office. Brennan has a recorded assignment on November 20, 2000 at Reel 011326, Frame 0918 and the current application has a recorded assignment on July 28, 2003 at Reel 013832, Frame 0016.

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Therefore, since the current application has a filing date after November 29, 1999 (the effective date of 35 USC §103(c)), Brennan is not available as a reference under 35 USC §103(c). Since the rejection above depends upon the combination of Bissett, Varona, and Brennan, this rejection fails as Brennan is not available as a reference.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1 – 15 and 18 – 20 is respectfully requested.

Respectfully Submitted,

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